

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BBC CHARTERING & LOGISTIC
GmbH & CO. KG
and
BRIESE SCHIFFAHRTS GmbH
& CO. KG,

Plaintiffs

V.

BERTLING LOGISTICS, INC,
GE TRANSPORTATION,
and
RECLAIM CONSULTING SERVICES,

Defendants

CIVIL ACTION NO. 13-577

ADMIRALTY

Pursuant to Rule 9(h) of the

Federal Rules of Civil Procedure

COMPLAINT FOR DECLARATORY JUDGMENT

The plaintiffs, BBC Chartering & Logistic GmbH & Co. KG (“BBC”) and Briese Schifffahrts GmbH & Co. KG (“Briese”), file this Original Complaint for Declaratory Judgment and respectfully represent:

I.

The plaintiffs request that this Court declare the rights, liabilities, and other legal relationships under a contract for the carriage of goods by sea, and to determine rights arising under said contract.

II.

The defendants, Bertling Logistics, Inc. ("Bertling"), GE Transportation ("GE"), and Reclaim Consulting Services ("RCS") are entities that would be affected by this Declaration.

III.

BBC is a foreign corporation organized and existing under the laws of a state other than the State of Texas, with its principal offices in Leer, Germany, and was and is engaged in the business of operating vessels for the carriage of goods by sea. Specific to this action, BBC is the time charterer of the M/V BBC MONT BLANC.

IV.

Briese is a foreign corporation organized and existing under the laws of a state other than the State of Texas, with its principal offices in Leer, Germany, and was and is engaged in the business of operating vessels for the carriage of goods by sea. Specific to this action, Briese is the owner/owner *pro hac vice* of the BBC MONT BLANC.

V.

Bertling, on information and belief, is a Texas corporation with its principal place of business in Texas.

VI.

GE is a foreign corporation organized and existing under the laws of a state other than the State of Texas, and is doing business within this District.

VII.

RCS, on information and belief, is a foreign limited company organized under the laws of the United Kingdom, with its principal place of business in Norwich, United Kingdom, and is doing business within this District.

VIII.

The BBC MONT BLANC is an ocean going vessel engaged in the common carriage of goods by sea for hire, and was to carry the cargo at the center of this dispute from Houston, Texas, to Puerto Bolivar, Columbia, with carriage beginning on or about November 27, 2013.

IX.

This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and this Court has jurisdiction over this action under 28 U.S.C. § 1331, as this action arises under the laws of the United States, in particular, the Carriage of Goods by Sea Act (“COGSA”), 46 U.S.C.A. § 30701, *et. seq.*, which the plaintiffs assert is applicable to this contract for carriage both under the terms of the applicable contract of carriage and by operation of law, as well as 28 U.S.C. § 1333, as this is a claim that arises under the Court’s admiralty and maritime jurisdiction.

X.

On or about October 23, 2013, BBC entered into a contract for carriage of a cargo of four packages consisting of four railcar locomotives to be carried from Manchester Terminal in Houston, Texas, to Puerto Bolivar, Columbia, aboard the BBC MONT BLANC. *See* Booking Note dated October 23, 2013, attached hereto as Exhibit A. Bertling is listed as the merchant on the Booking Note. *See Id.* On information and belief, Bertling acted as a freight forwarder and/or Non-Vessel Operating Common Carrier (“NVOCC”), and the cargo to be shipped was actually owned by GE. Bertling is and was at all relevant times an insurer of the cargo.

XI.

The cargo consisting of four packages was loaded onboard the BBC MONT BLANC at Manchester Terminal, Port of Houston, Texas, on November 27, 2012. Because the cargo was eventually offloaded at Manchester Terminal, however, a bill of lading was never issued.

XII.

The Booking Note provided as follows:

Number and kind of packages; description of cargo

4 x locomotives

Dimensions per unit: L: 22.60 x W: 3.23 x H: 4.93 mts

Volume per unit: 359.88 cbm

Weight per unit: 200 tons

...

It is hereby agreed that this Contract shall be performed subject to the terms contained on Page 1 and 2 hereof, which shall prevail over any previous arrangements and which shall in turn be superseded (except as to deadfreight, detention, demurrage and breach of contract damages) by the terms of the Bill of Lading.

XIII.

The terms and conditions accompanying the Booking Note provided as follows:

SPECIAL CLAUSES

...

B. U.S. Trade. Period of Responsibility

(i) In case the Contract evidenced by this Bill of Lading covers a shipment to or from a port in the United States, including any US territory, the U.S. Carriage of Goods by Sea Act of the United States of America 1936 (U.S. COGSA) shall apply. The provisions stated in said Act shall govern before loading, and after discharge and throughout the entire time the cargo is in the Carrier's custody and in which event freight shall be payable on the cargo coming into the Carrier's custody. For US trades, the terms on file with the U.S. Federal Maritime Commission shall apply to such shipments. In the event that U.S. COGSA applies, then the carrier may, at the Carrier's election commence suit in a court of proper jurisdiction in

the United States in which case this court shall have exclusive jurisdiction.

(ii) If the U.S. COGSA applies, and unless the nature and value of the cargo has been declared by the shipper before the cargo has been handed over to the Carrier and inserted in this Bill of Lading, the Carrier shall in no event be or become liable for any loss or damage to the cargo in any amount exceeding USD500 per package or customary freight unit. If, despite the provisions of 3(a), the Carrier is found to be liable for deck cargo, then all limitations and defenses available under U.S. COGSA (or other applicable regime) shall apply and suit may be brought by the Carrier at the Carrier's election in the U.S. District Court of proper jurisdiction.

See Id.

XIV.

Although BBC and Briese provided the defendants with the opportunity to declare a value of the cargo, there is no declared value of the cargo listed on the Booking Note. *See* Exhibit A.

XV.

The defendants have wrongfully alleged liability on the part of BBC and/or Briese for damage to one of the packages, locomotive number 1018. Accordingly, BBC, Briese, and the defendants are entities interested under the contract for carriage within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201(a).

XVI.

Further, any and all alleged liability on the part of BBC and/or Briese is specifically denied. Even assuming, however, purely for sake of argument, that BBC and/or Briese are responsible for the damage and/or loss, such damage / loss is subject to the U.S. \$500.00 per package limitation contained in COGSA.

WHEREFORE, the plaintiffs, BBC Chartering & Logistic GmbH & Co. KG and Briese Schiffahrts GmbH & Co. KG, pray that the defendants, Bertling Logistics, Inc., GE

Transportation, and Reclaim Consulting Services, be cited and served, and that after all legal delays and proceedings, this Court declare that:

The exceptions provided for by COGSA are a complete liability shield preventing any recovery by the defendants from the plaintiffs for the alleged cargo damages and/or loss.

In the alternative, the limitation of liability provisions in COGSA apply to the contract of carriage, thus limiting any potential recovery of the defendants to \$500.00 per package and/or C.F.U. for the alleged damages to the package.

In the further alternative, the plaintiffs are entitled to the benefits of the Limitation of Liability Act, 46 U.S.C. § 181, *et seq.*, as the alleged damages to the cargo, if any, occurred without plaintiffs' privity or knowledge.

Respectfully submitted,

/s/ Jason P. Waguespack

Jason P. Waguespack, T.A.

Federal I.D. No. 268357

Frederick W. Swaim III

Federal I.D. No. 412756

GALLOWAY, JOHNSON, TOMPKINS,
BURR & SMITH

One Shell Square, 40th Floor
701 Poydras Street

New Orleans, Louisiana 70139

Telephone: (504) 525-6802

Telecopier: (713) 525-2456

OF COUNSEL:

Nathan G. Orf (LA #34375)

GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH

701 Poydras Street, 40th Floor

New Orleans, Louisiana 70139

Telephone: (504) 525-6802

Telecopier: (504) 525-2456

ATTORNEYS FOR PLAINTIFFS

BBC CHARTERING & LOGISTIC GmbH & CO. KG

AND BRIESE SCHIFFAHRTS GmbH & CO. KG